

IN THE

**Supreme Court of the United States**

OCTOBER TERM 1978

No. 78-91

R. W. JONES, SR., *et al.*,  
*Petitioners,*

v.

CHARLES T. WOLF, *et al.*,  
*Respondents.*

**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA**

**PETITIONERS' REPLY BRIEF**

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**PETITIONERS' REPLY BRIEF**

The Brief for Respondents ("Resp. Brief") re-veals just how far apart the parties are concerning the key questions of law in this case. Petitioners believe that their earlier Brief anticipated and re-sponded to most of Respondents' arguments, and we wish to add only a few short points in reply:

1. **Determination of the Identity of the True Congre-gation of VPC Is Necessary in Order To Resolve This Dispute.**

It is important to note that Respondents acknowledge that PCUS had authority to determine

which of the competing factions constituted the true congregation of VPC. Resp. Brief at 5 n.9. Respondents assert, however, that "[t]he identity of the 'true congregation' has never been an issue in this case." *Id.*; accord, e.g., *id.* at 14-15.

The plain fact, however, is that—regardless of the legal rule they selected to resolve this controversy—the courts below were required to determine who constitutes the congregation of VPC in order to decide the property questions raised in this case. As we set forth in detail in our earlier Brief for the Petitioners ("Pet. Brief"), at 7, 16-17, the property at issue here is held in trust for the "use, benefit and behoof" of the congregation of VPC. Both Petitioners and Respondents claim to represent the true congregation of VPC.<sup>1</sup> Thus, whether the civil courts defer to the church court determination on this point, or whether they use some other legal rule to choose between the two groups, resolution of the conflicting

<sup>1</sup> This case is hardly unusual in presenting a conflict between two groups each claiming to be the rightful congregation of a local church. See, e.g., *State ex rel. Morrow v. Hill*, 51 Ohio St. 2d 74, 364 N.E.2d 1156, 1158 n.2 (1977); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865, 869-872 (Tex. Civ. App. 1977). Indeed, instances inevitably arise in church disputes where one faction contests the procedure used, or some other aspect of the decision purportedly putting the other faction in control of the congregation. Petitioners contend that in a hierarchical church the *Watson-Serbian* deference rule means that such issues should be resolved by the appropriate church court. It is unclear how civil courts could deal with such questions under the so-called "neutral principles/formal title approach" urged by Respondents—at least absent a full hearing in the civil courts on the merits of each such religious dispute.

property claims demands a decision as to which group is in fact the "true congregation" of VPC.<sup>2</sup>

Indeed, the "formal title" approach urged by Respondents leads only to the conclusion that title is in the local congregation—a proposition never disputed by anyone in this case. The further question of who properly represents the congregation was a fundamental element of the issue presented to and necessarily decided by the lower courts. It cannot be avoided under any approach to the case.

## 2. The *Watson-Serbian* Deference Rule Is Constitutionally Required.

Petitioners argued in their earlier Brief that First Amendment principles required the lower courts to defer to the hierarchical church court decision on the question of who constitutes the true congregation of VPC. See Pet. Brief at 11-17. Respondents argue, however, that the rule set forth in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), and its progeny, requiring deference to hierarchical church court decisions, has been "eliminated" in Georgia, Resp. Brief at 11, and is "not of constitutional dimensions." *Id.* at 19.<sup>3</sup> Respondents' position simply ignores the opinions of this Court to the contrary.

<sup>2</sup> Indeed, Respondents themselves note that the VPC trustees must "take their instructions solely from the local congregation." Resp. Brief at 24.

<sup>3</sup> Respondents seem to equate the state law implied trust principle with the constitutional deference rule first referred to in *Watson*. See Resp. Brief at 11 & n.15. This is a basic misconception. The deference rule arises out of the structure and rulings of the mother church and the local congregation's binding itself to abide by that structure and rulings. Whether or not state law principles call for an implied trust in favor of the mother church is simply irrelevant to application of the constitutionally mandated deference rule.



While *Watson* initially was decided without reference to the First Amendment, this Court subsequently held that the *Watson* rule is of constitutional dimension. *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 115-116 (1952). In *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710-711 (1976), this Court quoted approvingly the following language from *Watson*, and noted that it has "a clear constitutional ring":

It is of the essence of these [hierarchical] religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

The *Serbian* Court went on to state that "the *Watson* rule has been held to be mandated by the First Amendment." 426 U.S. at 712. Contrary to Respondents' contention that the *Watson* deference rule is not constitutionally required, this Court in *Serbian* summarized the First Amendment rule in terms precisely applicable to the instant case:

[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts

accept their decision as binding upon them. [426 U.S. at 724-725].<sup>4</sup>

### 3. PCUS Is a Hierarchical Church, and Thus the *Watson-Serbian* Rule Is Applicable Here.

Perhaps recognizing the weakness of their other arguments, Respondents seem to contend that no PCUS church rules call for church control over a matter such as that decided by the church court here. Respondents suggest that perhaps PCUS in fact is not hierarchical after all, at least with regard to this issue. See Resp. Brief at 27-28. The fundamental flaw in that argument is that the lower courts made no such finding,<sup>5</sup> nor could they under the circumstances here.

It should be noted at the outset that this Court has held on two separate occasions that PCUS is a hierarchical church. See *Watson*, *supra*, 80 U.S. at 722, 726-729; *Hull*, *supra*, 393 U.S. at 441-442. Numerous other courts have reviewed the PCUS *Book of Church Order* and come to the same conclusion. See, e.g., *Mills v. Baldwin*, 362 So.2d 2, 5, 7 (Fla. 1978); *Mills v. Baldwin*, Civ. Action No. 73-100 (Fla. Cir. Ct. 1975), reprinted at Pet. App. 20a, 23a ("The Presbyterian Church U.S. is not congregational in organization, but is clearly hierarchical or representative."); *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442, *cert.*

<sup>4</sup> *Watson* has also been cited with approval in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-447 (1968), and *Gonzales v. Archbishop*, 280 U.S. 1, 16 (1929). Only the dictum in *Watson* allowing civil courts to inquire into the "arbitrariness" of church decisions has ever been overruled, or even questioned.

<sup>5</sup> It is interesting to note that Respondents suggest what they believe the lower court findings were, "[a]lthough not stated in these terms." Resp. Brief at 14 n.19.

denied, 423 U.S. 913 (1975); *Presbytery of the Covenant, supra*, 552 S.W.2d at 868, 870.

Indeed, no other finding would be possible. The Brief for the Presbyterian Church in the United States as Amicus Curiae in Support of Petitioners ("PCUS Brief") sets out in some detail the provisions of *The Book of Church Order* and other governing church rules that clearly give PCUS church courts jurisdiction over a controversy concerning who constitutes the true congregation of a local church. *Id.* at 8-15. See also Pet. Brief at 6 n.3. Nothing in Respondents' Brief even suggests the inapplicability of these provisions.

*The Book of Church Order* emphasizes that a local congregation, or church session, is "not separate and independent" from the higher church courts, but rather is subject to their "review and control." JA 49-50. PCUS General Assembly rulings substantially pre-dating the instant controversy were explicit in holding that local congregations must use their property in accordance with the PCUS Constitution, and that in case of disputes the church courts retain the power to decide who is the true congregation entitled to continued control of church property. PCUS Brief at 11-12, 14:

The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. \* \* \* *In every instance nothing*

*in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church. (Emphasis added.)*

Disposition of the property of a particular church rests in the will of the congregation of that church. *The congregation is that body of persons recognized as members of that particular church by the respective courts of the church. (Assembly's Digest, p. 76) (Emphasis added.)*

\* \* \* \*

It takes more than a name to become a Presbyterian Church, U.S. It takes more than to profess the same faith as the Presbyterian Church, U.S. professes to become a Presbyterian Church, U.S. It takes a profession of that faith and *subjection to the government of that Church to make a Presbyterian Church, U.S.*

*A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. [preface to the Form of Government, III, 1, 5.] It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to*



*by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds.*

Moreover, numerous sections of *The Book of Church Order* require that local church members and officials must take oaths to submit to the supervision of PCUS church courts and to abide by PCUS governing rules. See *The Book of Church Order* §§ 4-1(2), 24-5, 27-6(4), 29-3, 210-5(c)(5), 219-1, 224-7, JA 33, 73, 83, 89, 145-146, 155, 159.

Thus, there simply can be no question that PCUS is a hierarchical church and that its members have agreed to abide by its constitution and church court rulings.<sup>6</sup> These rules, of course, do not prevent individuals like Respondents from withdrawing as members of PCUS or joining a new denomination; the rules simply prevent Respondents from ignoring decisions by the properly constituted church court as to the true congregation, and from taking the church property with them in the face of a ruling that they do not represent the true congregation.

The foregoing discussion indicates why Respondents are incorrect in their argument (Resp. Brief at

<sup>6</sup> This Court has noted that those who unite with a local church that is part of a hierarchical system do so with implied consent to the government of the hierarchical church and are bound to submit to that government. *Watson, supra*, 180 U.S. at 728-729, quoted with approval in *Hull, supra*, 393 U.S. at 446. Here, however, Petitioners need not rely upon an implied acquiescence in PCUS's form of government, including its church courts, because, as noted above, Respondents themselves took specific oaths to be bound by PCUS's form of government.

20-24) that the *Sharpsburg* case<sup>7</sup> is analogous to the present dispute. This Court dismissed the second appeal in *Sharpsburg* only after the state court had made a finding<sup>8</sup> that the structure of the Church of God is congregational, and not hierarchical, with regard to the matters at issue. See 249 Md. 650, 663, 241 A.2d 691, 699, 705.<sup>9</sup> That finding made the

<sup>7</sup> *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 241 A.2d 691 (1968), vacated and remanded, 393 U.S. 528, reaffirmed, 254 Md. 162, 254 A.2d 162 (1969), appeal dismissed, 396 U.S. 367 (1970).

<sup>8</sup> As Mr. Justice White noted in concurrence in *Serbian*, under the *Watson-Serbian* deference rule it is a threshold question for the civil court to determine whether the church government is indeed hierarchical. 426 U.S. at 725. If the church is not hierarchical with regard to the matter at issue—as in *Sharpsburg*—then the First Amendment does not command deference to any church court decision on that matter. Thus, the hypothetical question posed by the Amicus Curiae Brief of the Anglican Catholic Church, at 5, is completely answered by *Sharpsburg*: an otherwise hierarchical church, with an explicit charter provision giving local congregations exclusive power over certain matters, would not be deemed hierarchical with regard to such matters, and thus the *Watson-Serbian* deference rule would not apply.

It is also noteworthy that in *Sharpsburg* the mother church refused to recognize any right of secession and attempted to enforce that position in the civil courts by asking that those attempting to withdraw be enjoined from doing so. See 241 A.2d at 694. Such a ruling by a civil court would have been an obvious violation of the First Amendment since, as noted above, every member of a church or synagogue has an unfettered right at any time to disassociate himself or herself from any particular religious faith, doctrine or denomination.

<sup>9</sup> Indeed, the Maryland Court of Appeals found overwhelming evidence that the Church of God intended that its congregations be totally independent with regard to questions such as determining the identity of the congregation entitled to use of the property. See 249 Md. 650, 659, 241 A.2d 691, 697 (charter provision that the "congregation of this Church shall be and remain an independent congregation \* \* \* [and] such

(footnote continued)

*Watson-Serbian* deference rule inapplicable, since the rule applies only to hierarchical churches. In the instant case, no such finding was made, or could have been made, concerning PCUS, and thus the *Sharpsburg* decision is completely distinguishable. Instead, the reasoning and holdings of *Watson* and *Serbian* are completely applicable to this dispute and should have commanded the civil courts to defer to the church court ruling, rather than improperly reexamining the ecclesiastical question of which faction constitutes the "true congregation" of VPC.

(footnote continued)

associations [with a national church denomination] shall in no wise effect [sic] this Corporation in its ownership and control of its real and personal property, which shall be and remain in the properly constituted officers of this corporation."); *id.*, 249 Md. at 666, 241 A.2d at 700 (expert testimony that church government of Church of God "is not strictly speaking analogous to that of the Presbyterian denomination").

The differences between the Church of God government, reviewed in *Sharpsburg*, and the PCUS structure could hardly be more striking. As discussed at pp. 6-8, above, PCUS rules expressly state that local congregations are *not* independent, that they are subject to PCUS church court review and control, and that one of the PCUS church courts' powers is determination of the identity of the "true congregation" in case of a property dispute. This is also made clear by the various oaths which members and officials must take. See p. 8, *supra*.

## CONCLUSION

For the foregoing reasons, as well as those expressed in their earlier Brief, Petitioners respectfully urge this Court to reverse the decision below.

Respectfully submitted,

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